

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VASILIOS E. KALOMIRIS and DEPARTMENT OF THE ARMY,  
COMMUNICATIONS-ELECTRONICS COMMAND, Ft. Monmouth, NJ

*Docket No. 00-130; Submitted on the Record;  
Issued December 11, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability on September 10, 1998, causally related to his December 15, 1990 employment injury.

On December 15, 1990 appellant, then a 46-year-old electronics engineer, sustained a back injury while in the performance of duty. The Office of Workers' Compensation Programs initially accepted appellant's claim for lumbar sprain. Following his injury, appellant resumed his prior duties until he resigned in July 1997.

Appellant filed a notice of recurrence of disability (Form CA-2a) on October 12, 1998. He alleged that he experienced a recurrence of disability on September 10, 1998 causally related to his previously accepted employment injury of December 15, 1990. Appellant explained that in early September 1998 he began noticing persistent increased pain in his low back and left leg, consistent with the symptoms he experienced when he originally injured himself in December 1990.

The Office denied the claim on March 31, 1999, based on appellant's failure to establish a causal relationship between his claimed recurrence of disability and his prior employment injury. On April 7, 1999 appellant filed a request for reconsideration in which he argued that the Office neglected to consider a recently submitted report from his orthopedist, Dr. Robert J. Kane.

In a merit decision dated June 11, 1999, the Office expanded appellant's initial claim to include lumbar subluxations as an additional accepted condition resulting from his December 15, 1990 employment injury. The Office, however, denied appellant's claim for a recurrence of disability based on his failure to establish a causal relationship between his current condition and his previously accepted employment injuries of December 15, 1990.

The Board has duly reviewed the case record on appeal and finds that the case is not in posture for decision.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.<sup>1</sup> This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury. The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.<sup>2</sup> While a physician's opinion supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.<sup>3</sup> Moreover, the physician's conclusion must be supported by sound medical reasoning.<sup>4</sup>

In support of his claim for recurrence, appellant submitted several recent reports from his chiropractor, Dr. Eric Frankenfeld, who diagnosed, among other things, lumbar subluxations.<sup>5</sup> Dr. Frankenfeld attributed appellant's current condition to his prior injury of December 15, 1990. Appellant also submitted a March 18, 1999 report from Dr. Kane, a Board-certified orthopedic surgeon, who explained that he had recently treated appellant for an episode of left sciatica, which he believed to be a recurrence of appellant's prior back injury of December 1990. He also noted that a computerized tomography (CT) scan performed in 1991 showed evidence of a left herniated disc at L4-5.<sup>6</sup>

Proceedings under the Act are not adversarial in nature; nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>7</sup>

Although the reports of Drs. Kane and Frankenfeld do not contain sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that his current back condition is causally related to his accepted December 15, 1990 employment injuries, these reports raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.<sup>8</sup> While the Office identified a number of perceived deficiencies in the reports of Drs. Kane and Frankenfeld, the

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<sup>1</sup> 20 C.F.R. § 10.104(b) (1999); see *Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>2</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

<sup>3</sup> *Norman E. Underwood*, 43 ECAB 719 (1992).

<sup>4</sup> See *Robert H. St. Onge*, *supra* note 1.

<sup>5</sup> Dr. Frankenfeld's diagnosis is based in part on a November 24, 1998 x-ray.

<sup>6</sup> The record includes a March 20, 1991 CT scan of the lumbosacral spine at L4-S1 that was apparently administered to rule out herniated nucleus pulposus. Dr. Jeffrey Gould initially interpreted the CT scan as demonstrating probable left disc herniation at L4-5. The report also notes a diagnosis of left sciatica.

<sup>7</sup> *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>8</sup> See *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

Board notes that the record is devoid of any contradictory medical opinion evidence that might otherwise call into question the findings reported by the two physicians.

On remand, the Office should refer appellant, the case record and a statement of accepted facts to an appropriate medical specialist for an evaluation and a rationalized medical opinion on whether appellant's current back condition is causally related to the accepted employment injury of December 15, 1990. After such further development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The June 11, 1999 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC  
December 11, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Priscilla Anne Schwab  
Alternate Member